



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 12210852

Date: JUN. 07, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a business manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree and/or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner's proposed endeavor was of national importance, and that he was therefore not eligible for a national interest waiver.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the

sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

- (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge, and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Petitioner is a business professional with several years of experience in management in the banking industry. He earned a bachelor's degree in administration in 2009 from [redacted] College in [redacted] and an MBA in human resources from the same institution in 2011. The Director found that this evidence was sufficient to establish the Petitioner's eligibility as an advanced degree professional, and we agree. Accordingly, the sole issue on appeal is whether he is eligible for and otherwise merits a national interest waiver.

A. Substantial Merit and National Importance of the Proposed Endeavor

Regarding the Petitioner's proposed endeavor, the record shows that he is currently employed as a business consultant in the United States with [redacted].³ In the "Professional Plan & Statement" document initially submitted, he indicated that he intends to continue using his expertise in business administration to work as a "Business Administrator and Manager in the Financial Service Sector." He added that U.S. companies planning to do business in [redacted] would benefit from his experience working there, and that he would help U.S. businesses "improve their strategies and practices."

In responding to the Director's request for evidence (RFE), the Petitioner submitted a second "Professional Plan & Statement" in which he states that he intends to continue his career in the United States as a "General and Operations Manager," but also provides detail regarding his duties for [redacted]. These include obtaining licenses and registrations for client companies, developing business plans for them, advising them on how to reduce costs and improve efficiency, and providing tax advice. He also noted that the company has experienced an increase in clients during his employment, and that "more than 70 investors from my professional network have opened businesses of various types in the United States."

The Petitioner also stated in this new statement that he intends to work for U.S. companies to "structure their business in a way that will allow for increased profits and growth," and also advise them on how to "grow to other markets, whether within the country or abroad." In addition, he provided a list of companies "in which I intend to pursue job placements."

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of his work. In his decision, the Director noted that the record includes information regarding foreign investment, human resources, and operation management, but concluded that this evidence did not show how his proposed endeavor as a general and operations manager is of national importance. The Director also noted the Petitioner's employment as a "tax consultant," and concluded that this position was not in the proposed endeavor.

On appeal, the Petitioner asserts that his work "mirrors national importance since his field of work is credited with leveraging business, and operational tendencies that prioritize the productivity and

³ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we consider information about his position to illustrate the capacity in which he intends to work.

profitability of a wide number of market segments, and, in turn, the economy.” But it is the Petitioner’s specific proposed endeavor that is evaluated under the first prong of the *Dhanasar* framework, and broad assertions about his work in a general field which has national implications are insufficient to meet the requirements of this prong. As noted above, the Petitioner’s description of his proposed endeavor identifies more than one path, which we will analyze separately.

We first note that although the Petitioner identifies the broader area of his proposed endeavor alternatively as “business administration and management in the financial sector” and “general and operations management,” his description of his current position with [REDACTED] does not include the administration or management of a business, in the financial sector or elsewhere, but instead focuses on business and tax consulting for investors seeking to start businesses in the United States. Although the Petitioner does not indicate whether his proposed endeavor would involve remaining with this company, providing similar services in the employment of another company, or pursuing these activities through self-employment, the record does not establish that his continued activity as a business and tax consultant in any of these situations would be of national importance.

Specifically, he submitted letters from several clients that he has worked with in his current position, which generally describe the services provided by him and indicate satisfaction with his work. They confirm that in his role with his current employer, he has helped several clients to open businesses in the United States, including advising them of tax consequences and obtaining licenses and registrations. The Petitioner also included evidence from the U.S. Department of Commerce and U.S. Chamber of Commerce regarding the importance of foreign investments to the national economy, which shows the substantial merit of his work in this area. However, similar to the letters describing the teaching activities in the STEM field of the petitioner in the *Dhanasar* decision, this evidence does not indicate that the Petitioner would be engaged in activities that would impact the field of business, or foreign direct investment, more broadly.⁴ Rather, the effects of his activity are limited to his and his employer’s clients.

As noted above, the Petitioner also listed several potential job opportunities he intended to pursue as his proposed endeavor in business administration and operational and general management. This list included positions with companies across the United States, sourced from job search websites. While all of these positions included the word “operations” in the job title, they ranged from “operations professional” to “Vice President of Operations,” and appeared to span several industries. The record does not include information about the duties involved with these positions, so does not indicate that they would allow the Petitioner to advance his proposed endeavor by helping these companies to improve strategies and practices. More importantly for the determination of whether this proposed endeavor would be of national importance, the record does not include evidence to show that the Petitioner’s employment in these positions would have broader implications for the field of operations management, or have substantial positive economic effects beyond those of the employer.

The Petitioner also submitted articles about human resources, operations management, and start-up companies from a variety of sources. As with the evidence about foreign investment discussed above, this evidence is sufficient to show the substantial merit of operations management as a field, but does not show that the specific endeavor proposed by the Petitioner would be of national importance.

⁴ *Dhanasar*, 26 I&N Dec. at 893

Based upon our analysis of the Petitioner's description of the aspects of his proposed endeavor and the totality of the evidence in the record, we agree with the Director's conclusion that the Petitioner has not established that his proposed endeavor is of national importance. He therefore does not meet the requirements of the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The Director concluded that the Petitioner meets this prong, but did not include an analysis of the evidence in his decision. In support of his qualification under this prong, the Petitioner submitted evidence of his academic credentials and experience, including reference letters confirming his employment in the banking sector in [REDACTED] for many years and as a tax and business consultant in the United States. This includes two letters from [REDACTED], Business Development Manager at [REDACTED] and a former supervisor of the Petitioner at [REDACTED] and [REDACTED]. [REDACTED] highlights an important contribution the Petitioner made to [REDACTED] its internal operations. In addition, a letter from the CEO of [REDACTED], [REDACTED] credits a large part of the recent growth in his company's client base and increase in revenue to the Petitioner. We therefore agree with the Director's conclusion that the Petitioner has established that he is well positioned to advance his proposed endeavor.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the Petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of as labor certification. Here, the Petitioner asserts that because of his experience in operations management, the United States would benefit from his activities here, notwithstanding the presence of qualified U.S. workers. However, as the Petitioner has not established that his proposed endeavor is of national importance as required under the first prong of the *Dhanasar* framework, he is not eligible for a national interest waiver, and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

Because the Petitioner has not established that he meets the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he is not eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.